

DALLAS DIVISION

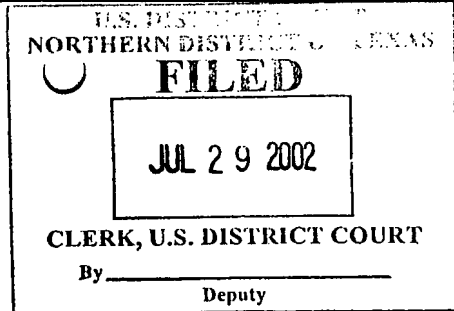
HALLIBURTON ENERGY SERVICES, INC.,

Plaintiff,

v.

WEATHERFORD INTERNATIONAL, INC. and  
BJ SERVICES COMPANY,

Defendants.



CIVIL ACTION NO. 02-CV-1347-P

Jury Demanded

**WEATHERFORD INTERNATIONAL, INC.'S ORIGINAL ANSWER,  
AFFIRMATIVE DEFENSES, AND COUNTERCLAIM**

Defendant Weatherford International, Inc. ("Weatherford"), through its undersigned counsel, answers Plaintiff Halliburton Energy Services, Inc.'s Original Complaint as follows:

**Answers to Plaintiff's Allegations of Patent Infringement**

Weatherford answers the allegations in the separately numbered paragraphs of Plaintiff's Original Complaint as follows:

To the extent the separately numbered paragraphs of Plaintiff's Original Complaint contain allegations against or request relief from *both* Weatherford and BJ Services Company, the responses below are based on the allegations against Weatherford only. Weatherford is without sufficient information to form a belief as to the truth or falsity of the allegations against BJ Services Company and, therefore, denies those allegations.

1. Weatherford is without sufficient information to form a belief as to the truth or falsity of the allegations in Paragraph 1 and therefore denies same.

2. Weatherford admits that it is a Delaware Corporation, that it does business in the district, and that it has a place of business at 2995 LBJ Freeway, Suite 186E, Dallas, Texas. Any other allegations, if any, are denied.

3. Weatherford is without sufficient information to form a belief as to the truth or falsity of the allegations in Paragraph 3.

4. Weatherford does not contest this Court's jurisdiction pursuant to 28 U.S.C. §§1331 and 1338(a) and that venue is proper in the Northern District of Texas pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1400(b) as asserted in Paragraph 4. Weatherford denies that Plaintiff's patents-in-suit are infringed, valid, or enforceable and therefore denies any basis for liability under any statute or law.

5. The allegations in Paragraph 5 are denied, except that it is admitted that United States Patent No. 5,271,468 (the "'468 patent'") issued on December 21, 1993 and that a copy of the '468 patent was appended to the Original Complaint. Specifically, Weatherford denies that the '468 patent was duly and legally issued. Weatherford is without sufficient information to admit or deny that the '468 patent issued to Halliburton and therefore denies same.

6. The allegations in Paragraph 6 are denied, except that it is admitted that United States Patent No. 5,224,540 (the "'540 patent'") issued on July 6, 1993 and that a copy of the '540 patent was appended to the Original Complaint. Specifically, Weatherford denies that the '540 patent was duly and legally issued. Weatherford is without sufficient information to admit or deny that the '540 patent issued to Halliburton and therefore denies same.

7. Weatherford is without sufficient information to form a belief as to the truth or falsity of the allegations in Paragraph 7 and therefore denies same.

8. Weatherford admits that Exhibit C of the Original Complaint contains pages that

were available in 2001 on Weatherford's internet website relating to its "FracGuard Composite Bridge Plug" and "FracGuard Composite Frac Plug." Weatherford admits that it has made, sold, and offered for sale within the United States downhole well tool products identified by Weatherford as its "FracGuard Composite Bridge Plug" and "FracGuard Composite Frac Plug." Weatherford denies any other allegations included in Paragraph 8 and further denies any and all liability for Plaintiff's claims.

9. Weatherford is without sufficient information to form a belief as to the truth or falsity of the allegations in Paragraph 9.

10. The allegations in Paragraph 10 are denied.

11. The allegations in Paragraph 11 are denied, except that it is admitted that Halliburton sent a cease and desist letter to Weatherford on September 10, 2001 asserting that Weatherford was potentially infringing unspecified claims of one or more of eight (8) different Halliburton patents.

12. The allegations in Paragraph 12 are denied.

13. The allegations in Paragraph 13 are denied.

14. The allegations in Paragraph 14 are denied.

15. The allegations in Paragraph 15 are denied.

16. The allegations in Paragraph 16 are denied.

17. The allegations in Paragraph 17 are denied.

18. Weatherford admits that Halliburton has made a demand for a jury trial.

#### **Response to Plaintiff's Requested Relief**

1. Weatherford denies Plaintiff is entitled to the requested judgment and denies any and all liability for Plaintiff's claims against Weatherford.

2. Weatherford denies Plaintiff is entitled to the requested injunctive relief and denies any and all liability for Plaintiff's claims against Weatherford.

3. Weatherford denies Plaintiff is entitled to the requested accounting for damages and denies any and all liability for Plaintiff's claims against Weatherford.

4. Weatherford denies Plaintiff is entitled to an award of damages and denies any and all liability for Plaintiff's claims against Weatherford.

5. Weatherford denies Plaintiff is entitled to the requested damages and denies any and all liability for Plaintiff's claims against Weatherford.

6. Weatherford denies Plaintiff is entitled to recover its attorneys' fees and denies any and all liability for Plaintiff's claims against Weatherford.

7. Weatherford denies Plaintiff is entitled to recover its costs and denies any and all liability for Plaintiff's claims against Weatherford.

8. Weatherford denies Plaintiff is entitled to any award of damages and, thus, is not entitled to recover prejudgment and post-judgment interest, and denies any and all liability for Plaintiff's claims against Weatherford.

9. Weatherford denies any and all liability for the alleged conduct, denies that any relief sought by Plaintiff is warranted, and requests that Plaintiff's requested relief be denied.

#### **Affirmative Defenses**

##### **Patent Invalidity**

1. The claims of the '468 patent and the '540 patent are invalid for failure to comply with the grounds specified in Part 2 of Title 35, United States Code, Sections 101 et. seq, as a condition for patentability, and, in particular, §§ 102, 103, and/or 112.

### **Prosecution History Estoppel**

2. Because of proceedings in the Patent and Trademark Office during the prosecution of the applications which resulted in the '468 patent and the '540 patent, as shown by the prosecution history thereof, Plaintiff is estopped to claim a construction of said patents that would cause any valid claim thereof to cover or include any of Weatherford's products or methods of manufacture or use, that are or have been used or sold or offered for sale by Weatherford.

### **Patent Misuse**

3. Plaintiff has engaged in patent misuse by impermissibly attempting to broaden the physical scope of the patent grant through activities such as its attempts at tying sales of its patented product with sales of non-patented items. By way of example, Halliburton's patent misuse includes informing customers that it would not sell its fracturing fluids to the customers unless they purchased Halliburton's composite bridge plug products. Halliburton's patent misuse renders the '468 patent and the '540 patent unenforceable.

### **Non-Infringement**

4. Upon information and belief, the claims of the '468 patent and the '540 patent have not been literally infringed, infringed under the doctrine of equivalents, or infringed by active inducement by Weatherford.

### **Unclean Hands**

5. Weatherford asserts that Plaintiff's claims for injunctive relief are barred by Plaintiff's unclean hands.

**Estoppel**

6. Weatherford asserts that Plaintiff's claims are barred by the affirmative defense of estoppel.

**Bad Faith**

7. Plaintiff has brought this suit in bad faith making it an exceptional case, thereby entitling Weatherford to its costs and attorneys fees pursuant to 35 U.S.C. § 285.

WHEREFORE Defendant, Weatherford International, Inc., prays that this Court dismiss Plaintiff's action and enter judgment that Plaintiff take nothing on its claims against Weatherford and award Weatherford its costs of defending this action and such other and further relief as it may be entitled.

**COUNTERCLAIM**

**Parties**

1. Weatherford International, Inc. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Houston, Texas.

2. Halliburton Energy Services, Inc. ("Halliburton") is a corporation organized and existing under the laws of the State of Delaware having a place of business located in Dallas County at 2601 E. Beltline Road, Carrollton, Texas 75006. As Halliburton is the Plaintiff in the above-captioned action, Halliburton may be served with a copy of this Counterclaim by serving this document in accordance with Rule 5 of the Federal Rules of Civil Procedure.

**Jurisdiction And Venue**

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 2201-2202, 1338 and 1331. A real, immediate, and justiciable controversy exists between Weatherford and Halliburton. The controversy relates to the invalidity and non-infringement of the '468 patent

and the '540 patent, as well as the invalidity of United States Patent No. 6,220,349. Halliburton has accused Weatherford of infringing these patents.

4. Halliburton is subject to personal jurisdiction and venue in the Northern District of Texas by virtue of its contacts with the State of Texas and this District in particular. As the Plaintiff in the above-captioned lawsuit, Halliburton has consented to jurisdiction and venue in this Court.

Count 1: Declaratory Judgment of Patent Invalidity

5. Weatherford incorporates by reference each preceding allegation as though expressly stated herein.

6. The claims in the '468 patent are invalid for failing to comply with the conditions and requirements for patentability as set forth in the United States Patent Laws, Title 35 U.S.C., including specifically §§ 102, 103, and/or 112 and the rules, regulations, and laws pertaining thereto.

7. The claims in the '540 patent are invalid for failing to comply with the conditions and requirements for patentability as set forth in the United States Patent Laws, Title 35 U.S.C., including specifically §§ 102, 103, and/or 112 and the rules, regulations, and laws pertaining thereto.

8. In addition to Halliburton's suit against Weatherford for allegedly infringing the '468 patent and the '540 patent, Halliburton, through its cease and desist letter and follow-up letters, also accused Weatherford of infringing United States Patent No. 6,220,349 (the "'349 patent") and demanded that Weatherford cease production of certain products. A real, immediate, and justiciable controversy exists between Weatherford and Halliburton concerning the invalidity and non-infringement of the '349 patent.

9. The claims in the '349 patent are invalid for failing to comply with the conditions and requirements for patentability as set forth in the United States Patent Laws, Title 35 U.S.C., including specifically §§ 102, 103, and/or 112 and the rules, regulations, and laws pertaining thereto.

10. Accordingly, Weatherford seeks a declaratory judgment pursuant to 28 U.S.C. §§ 2201-2202 that the '468 patent, the '540 patent, and the '349 patent are invalid.

**Count 2: Declaratory Judgment of Non-Infringement**

11. Weatherford incorporates by reference each preceding allegation as though expressly stated herein.

12. Weatherford's "FracGuard Composite Bridge Plug" and "FracGuard Composite Frac Plug" do not infringe any valid claim of the '468 patent.

13. Weatherford's "FracGuard Composite Bridge Plug" and "FracGuard Composite Frac Plug" do not infringe any valid claim of the '540 patent.

14. Accordingly, Weatherford seeks a declaratory judgment pursuant to 28 U.S.C. §§ 2201-2202 that Weatherford's "FracGuard Composite Bridge Plug" and "FracGuard Composite Frac Plug" do not infringe any valid claim of the '468 patent and the '540 patent.

**Count 3: Declaratory Judgment of Unenforceability of Patents**

15. Weatherford incorporates by reference each preceding allegation as though expressly stated herein.

16. Halliburton has engaged in patent misuse by impermissibly attempting to broaden the physical scope of the patent grant through activities such as its attempts at tying sales of its patented product with sales of non-patented items. By way of example, Halliburton's patent



misuse includes informing customers that it would not sell its fracturing fluids to the customers unless they purchased Halliburton's composite bridge plug products.

17. Accordingly, Weatherford seeks a declaratory judgment pursuant to 28 U.S.C. §§ 2201-2202 that the '468 patent, the '540 patent, and the '349 patent are unenforceable.

Count 4: Attorneys Fees and Costs

18. Weatherford incorporates by reference each preceding allegation as though expressly stated herein.

19. Weatherford is entitled to a declaration that this is an "exceptional" case within the meaning of 35 U.S.C. § 285, entitling Weatherford to an award of its reasonable and necessary attorneys' fees, expenses, and costs incurred in this action.

Jury Demand

20. Weatherford demands trial by a jury.

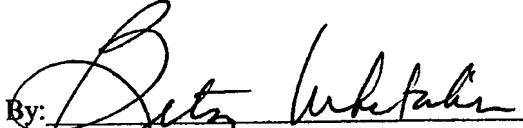
Prayer for Relief

WHEREFORE, Defendant/Counter-Plaintiff Weatherford International, Inc. prays for the following relief:

- (a) a judgment that US Patent No. 5,271,468, US Patent No. 5,224,540, and US Patent No. 6,220,349 are invalid;
- (b) a judgment that US Patent No. 5,271,468 and US Patent No. 5,224,540 are not infringed by Weatherford;
- (c) a judgment that US Patent No. 5,271,468, US Patent No. 5,224,540, and US Patent No. 6,220,349 are unenforceable;
- (d) a declaration that this case is exceptional within the meaning of 35 U.S.C. § 285;
- (e) an award of reasonable attorneys' fees and costs incurred by Weatherford in this action; and
- (f) such other and further relief as this Court deems just and proper.

Dated: July 29, 2002.

Respectfully submitted,

By: 

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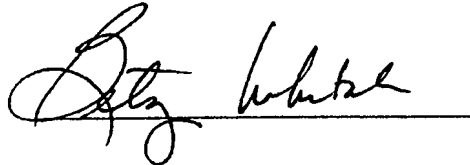
ATTORNEYS FOR DEFENDANT, WEATHERFORD  
INTERNATIONAL, INC.

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served upon the following counsel of record by hand delivery on July 29, 2002.

John F. Booth  
CRUTSINGER & BOOTH  
1601 Elm Street, Suite 1950  
Dallas, Texas 75201  
Telephone: (214) 220-0444  
Facsimile: (214) 220-0445

A handwritten signature in cursive script, appearing to read "John F. Booth", is written over a horizontal line.

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